

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

UNITED STATES OF AMERICA,) CASE NO: 7:19-CV-00403
)
Plaintiff,) CIVIL
)
vs.) McAllen, Texas
)
WE BUILD THE WALL, INC, ET AL,) Thursday, December 5, 2019
)
Defendants.) (1:44 p.m. to 2:42 p.m.)

HEARING

BEFORE THE HONORABLE RANDY CRANE,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For Plaintiff: PAXTON WARNER, ESQ.
DANIEL HU, ESQ.
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McAllen, Texas; Thursday, December 5, 2019; 1:44 p.m.

(Call to Order)

THE COURT: All right. Let me call for announcements. Let's see. United States of America versus We Build the Wall, Inc., et al. Fisher Industries I think is also a defendant. If I can get announcement from the government first.

MR. WARNER: Yes, your Honor. Paxton Warner on behalf of the United States, as well as Daniel Hu and then also on the phone is John Smith from Corpus Christi.

THE COURT: For the government. All right.

And so who is on the phone for the defendants? And if you could identify your name and who you represent.

MR. KOBACH: Yes, your Honor. Kris Kobach, general counsel for We Build the Wall. Also with me on the phone is Richard Kaye and David Olivera.

THE COURT: All right. And all from the Florida area or is this the David Olivera that I know from the McAllen area?

MR. KOBACH: David is local counsel.

THE COURT: Oh, okay, all right.

MR. KAYE: Yeah, I am --

THE COURT: Make sure it wasn't a coincidence.

MR. KAYE: Your Honor, this is Richard Kaye. I'm with the law firm of Barnes and Thornburg. And although we have a Dallas office, I'm in the Atlanta office.

1 **THE COURT:** All right. And you indicate you-all
2 represent We Build the Wall but I also have the defendants
3 Fisher --

4 **MR. KATE:** That's correct.

5 **THE COURT:** -- Fisher Industries, Fisher Sand and
6 Gravel and Neuhaus and Sons that were also named in the
7 complaint. Are they represented here this afternoon?

8 **MR. COURTOIS:** Yes, your Honor. Mark Courtois at
9 Funderburk Funderburk Courtois in Houston for Fisher Industries
10 and Fisher Sand and Gravel Company. And Tim Priebe who's
11 general counsel for Fisher Industries is on the phone also.

12 **THE COURT:** All right. Anybody here for Neuhaus and
13 Sons, LLC?

14 **MR. WARNER:** That's the one party I haven't gotten
15 ahold of, your Honor. That is the landowner.

16 **THE COURT:** Sure.

17 **MR. WARNER:** They're actually where the construction
18 is going on. So he was the one I was not able to get ahold of.

19 **THE COURT:** In private practice 20 years ago I did
20 some work so I'm familiar with some of those new house
21 entities. And Mr. Vaughn (phonetic), in particular, I can
22 recall.

23 **MR. WARNER:** Mr. Vaughn is his agent, his registered
24 agent. We're trying to get him served this afternoon, your
25 Honor.

1 **THE COURT:** Okay. All right. So I have read
2 90 percent of the materials that have been filed. A lot of
3 stuff came in over the noon hour and I had some commitments
4 already. So I think I've gotten through all of that though.

5 I've also tried to figure out on my own where the
6 heck this is, looking at a Google map trying to figure out from
7 the little bits of information that were supplied, where
8 exactly this is on the river. There was a link to a video on
9 the website of We Build the Wall that I looked at where it
10 looked like a foreperson with a construction cap on. There was
11 some dirt moving equipment in the background. There was this
12 gentleman was speaking. I presume that was this location but I
13 don't know that.

14 **MR. WARNER:** That is correct, your Honor. So this is
15 about a mile west of Anzalduas Park. It's a massive peninsula
16 where the river bends around. And I don't know if the court is
17 familiar where Military actually comes up and meets the IBWC
18 levy. And then the levy is actually the road for just a little
19 space of time there but basically just south of the Mission
20 area.

21 **THE COURT:** Okay. So this is almost directly south
22 of the National Butterfly Center but on the other side of the
23 levy.

24 **MR. WARNER:** So the Butterfly Center is to the west
25 of this by I believe two tracts of land.

1 **THE COURT:** All right. Let me see if I can switch to
2 my computer.

3 **(Pause)**

4 This is not really working. Here we go. Okay. It's
5 working now.

6 **MR. WARNER:** This is right here (indicating), Judge.
7 This is the boundary line and this is the boundary line and
8 this is the river.

9 **THE COURT:** So tell me --

10 **MR. WARNER:** So maybe less than a mile from
11 Anzalduas.

12 **THE COURT:** So this is the peninsula that you're
13 speaking of (indicating)?

14 **MR. WARNER:** Correct, your Honor.

15 **THE COURT:** And I apologize to outside counsel. I
16 could have probably Skype'd you-all in with a little more
17 planning so you could see what's on the video projector but
18 it's just a Google overhead of the river and adjacent land in
19 this -- in the area south of Mission. Do -- let's say -- I
20 would say southeast of the birding center or the Butterfly
21 Center.

22 **MR. WARNER:** Right. Butterfly would be here
23 (indicating).

24 **THE COURT:** Yes, I see that. So okay. It looks as
25 though in the video I saw on the website that there was some

1 construction or at least movement of vegetation adjacent to the
2 actual river. I could see water in the background. Was that
3 the river or was that a lake or a pond?

4 **MR. WARNER:** That's the river, your Honor.

5 **THE COURT:** Okay. So where on this map was that?

6 **MR. WARNER:** They are clear cut all the way around
7 the peninsula and all the way back up the western side.

8 **THE COURT:** Okay.

9 **MR. HU:** We've got some photos for you, Judge, that
10 we'll be happy to show you. And we've already supplied these
11 to opposing counsel.

12 **THE COURT:** Okay. Aerial?

13 **MR. HU:** Your Honor, taken around a little bit
14 earlier this morning.

15 **THE COURT:** Okay.

16 **MR. WARNER:** So for counsel on the phone -- oh, your
17 Honor, could we switch?

18 **THE COURT:** Oh, sure.

19 **MR. WARNER:** Sorry. I'm showing the court what I
20 emailed as Exhibit 1 of the pictures. So your Honor, this is
21 -- this morning the river is in the background. And as the
22 court can see, there's like rebar material in a trench on the
23 ground right here (indicating).

24 **THE COURT:** Okay. This -- wow. I mean, this looks
25 -- I look at this and it looks like a snow scene. Is that

1 just --

2 **MR. WARNER:** So it was -- sorry, your Honor, it was
3 through a window. So that's why but that's the river, that's
4 the Mexican side of the -- on the top part of the picture.

5 **THE COURT:** Okay. So behind this rebar and this side
6 of the river there's to be stacks of -- what are those? Rocks?
7 Is that just --

8 **MR. WARNER:** So your Honor, if I --

9 **THE COURT:** -- clear debris?

10 **MR. WARNER:** If I could show the court, for counsel
11 on the phone, Government Exhibit 3 which was the pictures.
12 What they've done is they've clear cut down and basically made
13 a beach phase feature on what used to be a riverbank that was
14 at least probably three feet in height. So right there is a
15 beach bleacher now where they have leveled out the riverbank.

16 **THE COURT:** And it used to be like on the opposite
17 side, sort of just a vertical --

18 **MR. WARNER:** Correct, your Honor. And then in terms
19 of --

20 **MR. HU:** For the court's orientation we can show you
21 where Chimney Park is if that would help.

22 **THE COURT:** Is there some business in Chimney Park?

23 **MR. HU:** A trailer park.

24 **THE COURT:** Oh, there's a trailer park there? Okay.

25 **MR. HU:** Right. There's a trailer park.

1 **THE COURT:** All right.

2 **MR. WARNER:** And then in terms of what's actually
3 going on right now, your Honor, I would show the court Exhibit
4 4. And basically they have dug a trench and they have these
5 big CAT vehicles lined up in front of the trench with mounting
6 posts on them. And they're bringing in the bollards here on
7 the truck on the right. And by all appearances it looks like
8 they're ready to drop bollards into the trench that I showed
9 the court in Exhibit 1 that has been set up to hold bollard
10 down.

11 **THE COURT:** All right. And distance from the river
12 is approximately what? From the current shoreline?

13 **MR. WARNER:** So it looks like it's anywhere from 30
14 to 40 feet, Judge. So --

15 **THE COURT:** Now, is that consistent with some of the
16 plans on approved sections of the wall that the government has
17 been undertaking thus far?

18 **MR. WARNER:** Is consistent with what, your Honor?

19 **THE COURT:** I mean, obviously there were other large
20 sections of the wall that the government is putting in, the
21 bollard (indisc.) wall. This distance from the river is it
22 consistent with or inconsistent with what the government has
23 been doing at other similar locations?

24 **MR. WARNER:** It is inconsistent, your Honor. As a
25 matter of fact, we closed on the Neuhaus property as a direct

1 purchase to the government so that we could build our wall into
2 the levy on that property. I apologize. Right before -- right
3 before We Build the Wall showed up and started clearing. So we
4 actually agreed to build wall on this piece of property into
5 the levy and they have destroyed the riverbank and are about to
6 put a wall up right next to the river.

7 **THE COURT:** And so your wall would be just a bit
8 further back from this wall?

9 **MR. WARNER:** No, your Honor.

10 **THE COURT:** Or substantially further?

11 **MR. WARNER:** If the court would show me the Google
12 map again, Judge?

13 **THE COURT:** Sure.

14 **MR. WARNER:** So our wall -- this is the levy right
15 here, your Honor (indicating).

16 **THE COURT:** Okay.

17 **MR. WARNER:** Our wall is going in this. This is the
18 levy up here (indicating). So our wall is going in up here
19 (indicating).

20 **THE COURT:** And their wall is again, down here
21 (indicating).

22 **MR. WARNER:** It's down -- it's right along the
23 river's edge.

24 **THE COURT:** Oh, so it's nowhere near --

25 **MR. WARNER:** No.

1 **THE COURT:** All right.

2 **MR. WARNER:** This right here, Judge, on this far
3 eastern side would be the closest that our wall gets to their
4 piece which is right down here along the river.

5 **THE COURT:** And that's the levy, I assume? That
6 structure there, that's the --

7 **MR. WARNER:** Correct, your Honor.

8 **THE COURT:** All right. Okay.

9 **MR. WARNER:** So the purpose today, your Honor, on
10 behalf of the United States is we have a treaty with Mexico
11 signed in 1970. It gives the IBWC the power to regulate
12 construction within the floodplain and along the riverbanks of
13 the Rio Grande River. If one is going to construct, they have
14 a set of requirements in place where you essentially submit
15 your hydraulic modeling to them --

16 **THE COURT:** Sure, okay.

17 **MR. WARNER:** And as I understand it, it's a very
18 elaborate packet with things that obviously I don't understand
19 because I went to law school instead of becoming an engineer
20 but they evaluate that. It takes anywhere -- from speaking
21 with the International Boundary and Water Commission -- it can
22 take upwards of three weeks, maybe a little bit longer if it's
23 really complicated, where they will then analyze and come back
24 to the entity with either a determination that the construction
25 that is being contemplated either doesn't violate the treaty

1 because it doesn't deflect a certain amount of water toward
2 Mexico or it doesn't cause erosion, or they may end up
3 modifying it and saying, listen, if you'll switch it and do
4 something else, then maybe it will qualify. And they'll send
5 that back to whoever they're dealing with.

6 But the whole point of this, Judge, is the river was
7 constantly changing course. And so what the treaty was
8 supposed to do in 1970 was set the actual centerline in the
9 boundary in the middle of the river. And then set up an agency
10 both in Mexico and the United States who would control what
11 happens along that floodplain so that if erosion happened, it
12 was naturally caused; it wouldn't be manmade. Because if the
13 boundary shifts -- so as what I showed the court in one of the
14 pictures where they've shaved the riverbank, well that may
15 actually move the river now. And maybe we have less land in
16 the United States as a result, maybe we have more in the United
17 States as a result because they've now shaved that bank without
18 any permission.

19 And so all we're asking is, stop what you're doing,
20 stop it all, stop trenching, stop everything and submit the
21 model like they promised they were going to do in an email on
22 November 21st to the IBWC. Just stop and let us look at the
23 model. If it complies, well we're going to tell them we have
24 no objection. It complies, it doesn't violate the treaty, it
25 means water deflection raise, it's not going to cause erosion,

1 whatever. It's not going to shift the boundary. If it needs
2 modifications, the IBWC will come back and tell them what
3 modifications it needs. On the other hand, if you just can't
4 build the structure right on the banks of the Rio Grande river,
5 the IBWC will come back and tell them that as well. But we
6 don't know at this point because they submitted a very
7 bareboned packet.

8 **THE COURT:** Yeah, I did see they did provide you some
9 hydrology information.

10 **MR. WARNER:** Very scant. And then we sent them the
11 link to the model that is actually the model that the IBWC's
12 engineers would use to evaluate this.

13 My understanding is they submitted something this
14 morning to the IBWC. We understand it's maybe 12 pages. We
15 don't know yet. I don't, as I stand here before the court, I
16 don't know if that's going to qualify as the model that the
17 IBWC needs or if they're still missing information. But what
18 we're asking the court for is a restraining order right now
19 today that tells them to stop, let the IBWC do its job under
20 the treaty, and come back and either tell them it meets it or
21 it needs mods or let's just go through the process.

22 **THE COURT:** Okay. Again, it looked like they were
23 responding to emails. I mean I saw several different what I
24 think are sort of hydrology diagrams showing water flow, water
25 flow in the floodplain, receding water flow, rising water flow,

1 how that would affect. And then information about the fact
2 that they were actually buttressing the -- reinforcing the bank
3 area so that to prevent erosion. It'd actually be enhanced
4 riverbank when they finish. It looks like they were putting in
5 a concrete road or something. Is that what you were referring
6 to as the scant --

7 **MR. WARNER:** Yes.

8 **THE COURT:** Okay.

9 **MR. WARNER:** So it's six pages of diagrams and a
10 one-page letter dated October 28th, 2019. A one-page letter
11 that basically kind of guesstimates how what the water flow
12 might be. And that's -- your Honor, that's not a proper
13 engineering model.

14 The IBWC from there then sent emails with the link to
15 the model so that they could properly input their information
16 into the model for that particular section of the river and
17 then send that back to the IBWC for analysis. So what got
18 transferred today, this morning after I filed the complaint, is
19 that going to meet it? I don't know. The IBWC is looking at
20 it now and will reach back out to let them know -- I guess now
21 through us -- whether it meets the requirements or if they need
22 additional information. But once they got everything they
23 need, once the IBWC has everything they need, they will begin
24 the engineering analysis to see if this will violate the treaty
25 or not.

1 **THE COURT:** And this takes you said about five days?

2 **MR. WARNER:** It's -- they -- when I spoke to the IBWC
3 yesterday, they said two to three weeks unless it's very
4 complicated. So it is a very complicated engineering process
5 that they go through, your Honor.

6 **THE COURT:** And so is the gravamen of their complaint
7 what was done with dirt movement on the bank of the river, or
8 is the main complaint with what's being done further back and
9 then placement of bollards? Or both?

10 **MR. WARNER:** So the main -- it's actually both now.
11 At this -- we did not realize till this morning that they'd
12 actually started shaving the bank of the river. Up until this
13 morning, they had been clearing the bank but they had left the
14 bank in place, you know. But now this morning we see they've
15 shaved the bank, plus dug the trench and are lined up ready to
16 drop bollard. So it's a compounded problem.

17 **THE COURT:** But a trench isn't going to affect
18 anything.

19 **MR. WARNER:** It could. We don't know.

20 **THE COURT:** A trench?

21 **MR. WARNER:** We have not analyzed that.

22 **THE COURT:** Thirty feet from the river? I mean,
23 suppose a farmer wanted to put his --

24 **MR. WARNER:** We don't know, Judge. They haven't
25 submitted a model.

1 **THE COURT:** A farmer wanted to put in some irrigation
2 equipment to water his fields and so he couldn't bring out his
3 tractor and plow a trench through it without getting -- I mean,
4 30 feet from the river without getting approval from
5 International Waters? That seems a stretch to me.

6 **MR. WARNER:** How about three and a half miles with an
7 18-foot hydraulic fence in it and massive --

8 **THE COURT:** Okay. So farmers got a big piece of
9 property. I mean my example was just -- I mean, in my mind I
10 just don't see that any work being done on a private person's
11 property is something that they need to clear with
12 International Boundary and Water Commission.

13 Now, obviously, shaving the riverbank to me seems
14 that it could affect erosion, it could affect water flow that
15 then may have a deleterious affect on the other side, on the
16 Mexican side of the river. While I can see where you've been
17 enhancing the U.S. side of the riverbank, again, would not --
18 would prevent erosion, natural erosion on the U.S. side and
19 perhaps that would then cause erosion on the -- problems on the
20 Mexican side. And then certainly when you measure the middle
21 of the river maybe it's moved six inches south.

22 **MR. WARNER:** Maybe, maybe considerably, your Honor --

23 **THE COURT:** Or considerably, sure.

24 **MR. WARNER:** Your Honor, and so the other problem
25 with the wall is it's all about water deflection then. So if

1 you put bollards up in a flood event and a high water event
2 that would come up over the river which is now shaved, the
3 bank, that could then deflect water causing erosion in Mexico
4 and further erode the U.S. bank that's now shaved. So it's a
5 twofold problem; it's not just shaving the bank. It's
6 deflection off of that concrete structure.

7 I would offer to the court the United States' wall is
8 going in a levy because we're not going to violate the IBWC
9 treaty.

10 **THE COURT:** Again, the government's not saying though
11 this wall can't be placed there or built there eventually, it's
12 simply that we want to make sure -- the government wants to
13 make sure that it's not going to affect the boundary of the
14 river.

15 **MR. WARNER:** That is what we're here for today, your
16 Honor, is to say please get them to stop so that we can
17 properly analyze a proper model and do the engineering. And if
18 it clears, it clears. We'll have to live with that. But if it
19 doesn't, then they'll either need to make modifications or
20 think about putting it in a different spot but at least give us
21 a chance to do our job under the 1970 treaty.

22 **THE COURT:** How much of the river bank has actually
23 been shaved? The pictures I looked at looked like just a very
24 small portion but is it a rather long area?

25 **MR. WARNER:** As I stand here, your Honor, I don't

1 know how long --

2 **THE COURT:** I mean, was it just 30 feet or just --

3 **MR. WARNER:** More than 30 feet, your Honor.

4 **THE COURT:** -- make it like a boat ramp? I mean, or
5 is this a substantial area?

6 **MR. HU:** Your Honor, I was counting it this morning.
7 It's more than 30 feet.

8 **THE COURT:** What would you guesstimate?

9 **MR. HU:** About a mile.

10 **THE COURT:** A mile of shaving, oh, substantial.

11 **MR. HU:** (indisc.) about a mile.

12 **THE COURT:** All right. All right. So I do have some
13 questions for counsel for We Build the Wall. Just following
14 local news, I read on Twitter that the state court had issued
15 an injunction against any sort of construction on this private
16 wall project. I read a copy of the order which somebody on
17 Twitter had actually posted -- and this was a few days ago.
18 And so then when this lawsuit was filed today, I was a little
19 curious as to what's the purpose of this? Hasn't construction
20 already been stopped because of the state-court TRO? And I was
21 advised that here now that obviously that hasn't stopped
22 construction or apparently hasn't stopped. I don't know the
23 complete details of the -- or don't recall the complete details
24 of the TRO. But can counsel for We Build the Wall tell me
25 what's happening with that restraining order that was issued in

1 state court?

2 **MR. KOBACH:** Your Honor, this is Kris Kobach with We
3 Build the Wall. And I think I'll be handing off in a moment to
4 either Mr. Courtois or Mr. Priebe representing Fisher
5 Industries but just as an initial matter, if just for one
6 minute I might point out a relevant -- a couple of important
7 assumptions in the factual assertion of the complaint that are
8 incorrect.

9 Specifically, paragraphs 13 and 14, there's a
10 mistake. It's an understandable mistake by the U.S. government
11 but they state that We Build the Wall has contracted with
12 Fisher Industries to undertake this project. And then
13 paragraph 14 states that We Build the Wall has acquired a legal
14 interest in the land. Both of those statements are incorrect.
15 We Build the Wall doesn't have any property interest in the
16 land. And We Build the Wall is not -- did not initiate the
17 project or contract with Fisher Industries. They might be
18 mistaking this because in a previous project that We Build the
19 Wall built in Sunland Park, Mexico, we did purchase the land
20 and we did contract with Fisher Industries. But in this
21 particular case, Fisher Industries has bought the land -- or is
22 in the process of buying the land and Fisher Industries is in
23 the driver's seat of the project. They contacted We Build the
24 Wall to ask us if we could provide any financial assistance.
25 We provided a very modest sum worth approximately five percent

1 of the total cost of the project but we are best equated to a
2 passive investor. We don't have any control over the project
3 or the machinery or what's going on, nor do we have any control
4 over the property. So to that extent, we really have no
5 ability to facilitate any relief that the court may grant. And
6 so therefore we believe we've been improperly named as a
7 defendant and would ask that we be removed. If the court does
8 issue a TRO, that we be removed from any -- any relief the
9 court grants. I can understand how they would make the mistake
10 based on our first project and based on some of the social
11 media cheerleading that our -- some of our people have done for
12 this project but we actually don't control anything going on
13 here.

14 We're certainly more than happy to provide the court
15 any information we can but I think most of your questions can
16 be answered by Mr. Priebe and Courtois regarding your question
17 about the state court TRO that was issued two days ago. It
18 also incorrectly assumes that we are the ones owning and
19 driving this. It was issued ex parte. And it, if I recall
20 correctly, I believe it only asks for the cessation of any
21 bollards. I don't believe it refers -- I could be incorrect
22 but I don't believe it refers to any bank modifications like
23 clearing vegetation.

24 **THE COURT:** All right. Now, Mr. Warner, I did see a
25 deed or something. It looks like this property was conveyed to

1 somebody, or a 150-foot strip three miles long added up to so
2 many hundred acres or something.

3 **MR. WARNER:** So your Honor, the deed that we attached
4 was so that we could be very specific about property that we
5 were asking for the restraining order on. So that deed is the
6 deed for that entire peninsula that Mr. Neuhaus bought from the
7 Hardwick (phonetic) family. And so we wanted to be very
8 specific which -- where we were talking about. And it
9 basically goes from edge to edge and all the way around the
10 river. So that's why we attached that for the court for
11 specificity.

12 And your Honor, as to We Build the Wall's
13 involvement, I will be very honest, your Honor. I watched on
14 their website as Foreman Mike specific said that they bought a
15 150-foot easement and they were clearing 120 feet and saving 30
16 feet in reserve. So I --

17 **THE COURT:** Well, he never said who he was with.

18 **MR. WARNER:** He didn't but he's got big We Build the
19 Wall and he's on their website.

20 **THE COURT:** No, I didn't -- he had -- I thought he
21 had just kind of a yellowish hardhat. I didn't notice that it
22 had any -- but he did --

23 **MR. COURTOIS:** That is correct, your Honor.

24 **THE COURT:** But at the end he did say we appreciate
25 your contributions and there was some cheerleading as, to use

1 your words, there towards the end but I couldn't tell who he
2 was with. I assumed he was a construction foreman that was
3 just very enthusiastic about the project. And also somebody is
4 getting paid. He's obviously -- I assume he's working. The
5 more wall there can be built, you know, the better financially
6 he and others who are involved in construction become. And so
7 I can just see why he would advocate it as well.

8 So all right. So let's move on then to Fisher
9 Industries. If I could get counsel for them to clarify, agree
10 or disagree with Mr. Kobach from We Build the Wall about who's
11 really in charge of the construction project.

12 **MR. COURTOIS:** This is Mark Courtois for Fisher.

13 Yeah, I think that's exactly correct. One of the
14 Fisher entities is going to be acquiring an interest in the
15 property. And it's the Fisher entities that are actually
16 undertaking the construction for the work that's been going on
17 out there.

18 Kind of to address the government's position on
19 things, we don't necessarily have a problem working with the
20 commission on trying to get their approval on what we're trying
21 to do. And we will agree not to pour any cement or build any
22 permanent structure. But we don't think that there's a need to
23 prevent us from clearing and also trenching in preparation for
24 what should be the construction of the wall. But in the event
25 that some things needs to change, then that dirt is easily

1 pushed back in and we can move it as necessary. But this is
2 costing us about \$500,000 a day. We've got about 50 people out
3 there working. And so it's a major undertaking for Fisher to
4 do this project. And so we'll continue to work with the
5 government to try to make sure that they're happy and pleased
6 and we can move forward with everything. But we would like to
7 continue some of the activities out there but we are agreeable
8 not to pour any concrete, place any bollards until such time as
9 we get that approval.

10 **THE COURT:** And I guess there were some other
11 concerns the government had; in particular, the shaving of the
12 riverbank. I mean, certainly I think we need to put a
13 temporary stop to that, although maybe you've already finished
14 whatever shaving it was that you were going to be doing. But
15 it seems to me -- I'm not a hydrology engineer but just seems
16 sort of common sense that the reshaping of the bank in the
17 manner in which it's done, sort of a beach landing I guess how
18 I'd call it now -- could affect water flow and in a way that
19 may be deleterious to either side of the river. It may be
20 neutral, may be nothing. Again, I don't understand hydrology
21 and maybe this is zero effect on it and it's just more I guess
22 aesthetically pleasing to have a beach entrance instead of what
23 was there previously. I'm not really sure why that is being
24 done but in any event, it does -- that does cause the court
25 some concern.

1 Do you have any problems with ceasing the -- that
2 sort of work, the grading of the bank?

3 **MR. COURTOIS:** Part of the problem we're having is of
4 not getting accurate hydrology analysis unless we do clear the
5 bank. There was heavy vegetation on the banks. And you just
6 can't -- you can't get good surveys with that vegetation there
7 and you can't get a good analysis for the hydrology report with
8 that vegetation there. So for the area that we've been able to
9 do, we actually do better hydrology reports for the government
10 so that they can have that.

11 And the other thing is is that we do want to seed
12 that and we want to get grass growing on it now so it holds.
13 But I mean if you grant this injunction, we're not going to be
14 able to do that.

15 **THE COURT:** Well, I don't have any problem with you
16 planting grass on it or preventing it from eroding from what
17 you've done from eroding. I think we would all say that's
18 probably efforts to keep the status quo.

19 **MR. WARNER:** Your Honor, if I could though I would
20 distinguish from what Mr. Courtois says is clearing which
21 clearly they had done in the past. They just cleared the
22 bank --

23 **THE COURT:** Sure, that's --

24 **MR. WARNER:** -- versus shaving the bank and creating
25 a beachhead which now apparently does need something on it to

1 hold it in place.

2 **THE COURT:** Right so I thought Mr. Courtois was clear
3 about that as well. Nobody's complaining about whatever --
4 moving and bulldozing some trees. Look like maybe there was a
5 lot of stuff that looked kind of to me like sugarcane growing
6 in that area. But plowing that, mowing that down, as long as
7 you're not physically moving dirt from the riverbank or down at
8 the river's edge.

9 So I guess from this point, Mr. Courtois, can we
10 cease the actual shaving of the riverbank until whatever
11 hydrology that needs to be done is completed here in the next
12 week or so.

13 **MR. COURTOIS:** Yeah. I mean, we can do what the
14 court needs us to do. We want to be as cooperative as possible
15 but to move the project forward while we're not -- while we're
16 just sitting here waiting for the agreement.

17 **THE COURT:** Well and obviously you must have a big
18 confidence that your location and design of the fence is going
19 to be okay with the International Boundary and Water Commission
20 given your investment in it. I mean, if it comes out where
21 it's a big problem and then we permanently stopped it, you'd
22 either have to redesign it, put dirt back in trenches and find
23 new places to locate the trench and the wall that you're
24 building. So I would think it would be some incentive for you
25 to stand down as well.

1 All right. So it seems to me that we have sort of an
2 agreement that we're not going to shave the riverbank.

3 We're not going to install any concrete or bollards,
4 any permanent structures. But they would like to continue
5 trenching work that's not along the riverbank but the current
6 location. Does the government have any problem with them --

7 **MR. HU:** Your Honor, the trenching actually is along
8 the riverbank. I think if we could show the court Exhibit
9 Number 3 --

10 **THE COURT:** Hang on. Let me pull up Exhibit 3. Or
11 you're talking about your Exhibit 3 for the hearing today or --

12 **MR. HU:** Yes, Government's Exhibit 3, your Honor.
13 So you can see -- as the court can see in Exhibit
14 Number 3, here's the river (indicating) --

15 **THE COURT:** Yes.

16 **MR. HU:** -- and this is probably just a few feet from
17 the river is this dotted line, this kind of pink line and
18 that's where they're doing the trenching at this time. So it
19 is very close to the river. And then my understanding is
20 (indisc.) Government Exhibit 1 --

21 **THE COURT:** But that's not the bollards is it?
22 That's just for the road they're going to build or --

23 **MR. HU:** It's hard -- it's very hard to tell, your
24 Honor, because obviously --

25 **THE COURT:** I mean, that's not where the rebar is,

1 that's not where the deep trench is. I mean, look like there
2 were some other pictures where it looked like the trench was
3 very deep.

4 Mr. Courtois, what's the depth of the main trench?

5 **MR. COURTOIS:** The trench that we're building for the
6 wall itself is 16 inches wide and about two and -- two feet two
7 inches deep.

8 **THE COURT:** Oh, that's it?

9 **MR. SPEAKER:** That seems about right. That --

10 **THE COURT:** How do you even put a bollard in
11 something so shallow and then be able to --

12 **MR. COURTOIS:** Well it is going to come up about a
13 foot over the surface so it's going to be about three feet of
14 concrete altogether and then the bollards are going to
15 (indisc.).

16 **MR. HU:** Your Honor, I'm showing the court Government
17 Exhibit Number 2. This is Mexico on the other side of this
18 sort of green and these trucks and where they're doing the
19 trenching work as you can see by this frame is right along the
20 river. And that is where they're doing, as Counsel stated, the
21 16-inch wide, two foot deep (indisc.).

22 But the concern we've got is they're dropping rebar
23 into it. So if you're going to put rebar in then it seems to
24 me that (indisc.) the concrete's going to follow it pretty
25 quick. Because if you leave the trench with the rebar in it,

1 and you have one good rain storm here in the Valley, all you're
2 going to do is have mud. And so I think you really can't allow
3 trenching and then putting rebar in because then they'll just
4 put concrete in.

5 **MR. COURTOIS:** Well, I mean, we'll agree to an
6 injunction that there will be no concrete placed until we get
7 this issue resolved. I mean, the rebar can be easily removed.
8 If we've got electrical conduit, there is going to be
9 electricity going to the wall so the fence. And so we'd like
10 to be able to get the conduit done, get the rebar in place, get
11 the trench done and not do anything of a permanent nature until
12 we get this issue resolved.

13 **THE COURT:** I mean, it seems reasonable to me. What
14 do you think, Mr. Hu?

15 **MR. HU:** Your Honor, I'm not a construction engineer
16 but it just seems to me if you're going to put rebar in you
17 sort of have to put the concrete in because otherwise the mud
18 will fill it in but I see where Counsel is going with this.

19 **THE COURT:** I mean, they're willing to risk -- risk
20 that. Just from what I'm seeing here and what the government
21 is saying, they're -- I mean the government's very pessimistic
22 that this project is going to pass the hydrology analysis or
23 are you really just completely --

24 **MR. HU:** It's pretty unknown, your Honor. I mean,
25 for the border fence itself, the fence that the government's

1 building, the IBWC has to approve and get with border patrol
2 and approve all of the border patrol hydrology as well. And in
3 my experience, when I used to have Mr. Warner's job doing a
4 border fence in '08, we're looking at hundred-page studies,
5 very big complex hydrologic studies and a lot of dialogue
6 between the IBWC and at that time, the border patrol about the
7 hydrology. So I'm not -- based on my experience, I'm not sure
8 how this is going to go.

9 **MR. KAYE:** Your Honor --

10 **THE COURT:** Generally have you --

11 **MR. KAYE:** Your Honor, this is Richard Kaye. And I'm
12 the attorney that handled or is currently handling the
13 construction of the border wall in Sunland Park, New Mexico on
14 behalf of We Build the Wall.

15 Our hydrology report, I think we have a couple of
16 items outstanding on that but it was more in the 30-page type
17 thing. It was not as extensive as counsel for the government
18 seems to --

19 **THE COURT:** There is no river there, right? It's
20 just dry land.

21 **MR. KAYE:** No, it's -- no, yes -- yes, there is.

22 **THE COURT:** There is?

23 **MR. KAYE:** You're actually -- actually the gate that
24 we built, your Honor, which is the subject of our negotiations
25 with IBWC, was really up to the river itself.

1 **MR. WARNER:** Your Honor, I would argue it's maybe a
2 little bit shorter than what we see because it's just a small
3 piece of that wall that's right up next to the river. The rest
4 of it goes right up the side of a mountain.

5 **THE COURT:** Okay.

6 **MR. WARNER:** So there's a piece that comes down.

7 **(Voices overlapping)**

8 **MR. KAYE:** -- that there's a correction there.

9 Excuse me.

10 We moved over 200,000 cubic feet of dirt.

11 **THE COURT:** Okay. I think it --

12 **MR. KAYE:** So it was a much larger project, yeah.

13 **THE COURT:** Was there a picture of that on the
14 website?

15 **MR. WARNER:** There was, your Honor.

16 **THE COURT:** A before and after?

17 **MR. WARNER:** Before and after.

18 **THE COURT:** Okay. I did see that.

19 **MR. KAYE:** Yes, yes, yes.

20 **MR. WARNER:** It's impressive to see, your Honor.

21 **THE COURT:** It's not my guess.

22 **MR. WARNER:** I would argue to the court that if
23 you're going to put three and a half miles along the river,
24 that's hydrology all along that three and a half miles, not
25 just the shortest space (indisc.) gate is. And once again,

1 just don't put any bollard in, quit shaving the bank --

2 **THE COURT:** Right.

3 **MR. WARNER:** We'll live with that but let us do our
4 work and come back and let them know whether it passes, whether
5 it needs modifications, what it needs.

6 **THE COURT:** All right. Now, how quickly can we get
7 this done? Three weeks seems like that's sort of a normal "put
8 it in my inbox; I'll get to it but I'm working first-in first-
9 out but can you move this to the top of the line."

10 **MR. HU:** We're running into holidays.

11 **THE COURT:** So now you're saying we're going to need
12 a gap for the holidays? No, that doesn't seem reasonable.

13 **MR. WARNER:** Your Honor, we were -- so we were going
14 to ask the court for an injunction, a preliminary injunction
15 hearing next week where we were actually going to bring the
16 engineers in to testify to the court.

17 **THE COURT:** I mean, we can, sure.

18 **MR. WARNER:** So that we can get these questions
19 specifically answered. I don't want to speak to the engineers
20 because I just -- I don't understand how complicated
21 engineering is.

22 **THE COURT:** So Mr. Courtois, can we -- do you think
23 your -- you said you had -- no, I'm sorry. It was Mr. Warner
24 that said that there had been an uploading of some hydrology
25 information today or this morning. Is that something that you

1 think will satisfy the water commission's needs or do you
2 foresee that you need to supplement that? Because some of this
3 is on you as well, your clients, to get that hydrology
4 information to them so that they can then analyze it and
5 determine whether it's satisfactory or not.

6 **MR. COURTOIS:** This is Mark Courtois. Yeah, we gave
7 them further evidence today and we're ready and willing to work
8 with them in any way we need to to get them the information
9 they need.

10 **THE COURT:** All right. And this is Mr. Greg Jentz
11 (phonetic), the civil engineer who's doing this? TGR
12 Construction, Inc.?

13 **MR. COURTOIS:** Yeah, that's Fishery Industry. He's a
14 Fisher employee.

15 **THE COURT:** Okay.

16 **MR. KOBACH:** Your Honor, this is Kris Kobach with We
17 Build the Wall. Just one point that I think the court should
18 be aware of.

19 The -- I think the three week estimation is certainly
20 possible but based on our experience working with the IBWC,
21 just in getting permission to put a gate across the IBWC
22 property in Sunland Park, we're going on six months. And the
23 IBWC still hasn't reached a final decision. So I would
24 encourage you, if you do issue any injunctive relief, that you
25 place some time limit on the IBWC because based on past

1 experience, they have not acted quickly although I think they
2 certainly can.

3 **THE COURT:** All right. And --

4 **MR. SMITH:** Your Honor, John -- if I may? John Smith
5 for the United States.

6 We also have to remember the IBWC is also doing
7 hydrology with border patrol for this project. For instance,
8 we just have been in negotiations with Rio Grande City where we
9 are doing multiple hydrology studies to determine the alignment
10 there. So I mean there's other projects with border wall
11 concerns for hydrology reports ongoing. So I don't want to
12 speak for them on how quick they can do that.

13 **THE COURT:** No with --

14 **MR. SPEAKER:** But this is on private property though.

15 **THE COURT:** Right. The others aren't -- real no
16 urgency on the others. But doesn't this seem to be -- I mean,
17 this seems to be duplicative of what the government is already
18 doing. What is -- I just wonder what's the science behind why
19 this particular private wall is being placed here when just a
20 few thousand feet away is the government's going to put up
21 their bollard designed wall.

22 **MR. WARNER:** So ours would actually be that levy
23 wall, your Honor, that's actually built into the levy --

24 **THE COURT:** Right. I'm familiar with them.

25 **MR. WARNER:** Right. So we've already started that in

1 Hidalgo County because of hydrology issues. We don't want a
2 Swiss-cheese fence where maybe sometimes it's okay along the
3 river and then sometimes it's not. So in order to maintain
4 consistency, we've gone to the levy. It's a known item. And
5 we're building our wall there. As a matter of fact we --

6 **THE COURT:** Yeah. My question wasn't to you.

7 **MR. WARNER:** Oh, okay.

8 **THE COURT:** I understand why the government's putting
9 its wall in. I'm wondering why is the private party here
10 spending its resources putting in a wall that's going to run
11 parallel and adjacent to a government-funded wall. It just --
12 I'm curious as to the science behind that.

13 **MR. PRIEBE:** Your Honor?

14 **THE COURT:** Yes?

15 **MR. PRIEBE:** Your Honor, this is Tim Priebe. I'm
16 general counsel for Fisher and I think I can address that
17 issue.

18 You know, we followed and we've been pretty active in
19 pursuing border wall contracts to find a solution for that.
20 And we understand from everybody we've talked to at DHS, the
21 other entities and so forth, that they're struggling in Texas
22 acquiring private right of way and so forth. And a lot of
23 people we've talked to in Texas don't like the government
24 putting the wall two feet off the border. So part of this --
25 and you're right, we're investing a ton of private money to try

1 to work with IBWC to come with a solution that puts the wall
2 right along the Rio Grande where it's going to be best for
3 border protection. So all along we've tried to advise IBWC
4 with what we're doing, why were doing it and so forth. But to
5 answer your question I think is, from all the input we've got
6 from DC from DHS from everybody, the solution that currently
7 the core is working on to put it two miles off the border just
8 isn't working. And we are confident in our hydrology studies
9 that the IBWC at the end of the day is going to agree with us.
10 So as Mr. Courtois had alluded to, you know, if we're wrong and
11 we're investing our own money, we need to fix it then and we
12 need to take whatever wall is out, we need to do whatever
13 grading they need and so forth. And, you know, my experience
14 in TROs and so forth, you can bond some of these things too. I
15 don't know if it's appropriate with something like this. But
16 we want to work with IBWC, we're willing to give them whatever
17 assurances, give them as much information as they (indisc.) to
18 get this done.

19 **THE COURT:** Let me just make a couple of comments.
20 And one, I do want to talk about bonding but I think your
21 premise is mistaken about landowners not wanting the wall or
22 preventing the government putting a wall there. If you could
23 tell me how many landowners in Hidalgo and Starr County that
24 you approached to get rights of entry on. There were like 267
25 landowners and we think we had three that didn't grant the

1 government's request to do that. Two of them were a church,
2 one was a city park that was a church many years ago but owned
3 by the city now. One was the property that was the home for
4 some priests and then the third was just somebody they couldn't
5 get ahold of who had fled to Mexico to dodge, allegedly dodge
6 law enforcement troubles.

7 **MR. WARNER:** So judge we've actually -- we filed
8 almost 30 rights of entry condemnations. Some of them have
9 settled very quickly once we filed. Judge Alvarez had a whole
10 slew of them as well.

11 **THE COURT:** I thought Mr. Smith or somebody had come
12 here and told me that there were hundreds and hundreds that had
13 been filed and only three that were contested --

14 **MR. WARNER:** So (indisc.) the project, if we go all
15 the way to Starr County, yes, we're talking hundreds and
16 hundreds. And even those have mostly agreed, your Honor. We
17 may have more coming. I can tell the court --

18 **THE COURT:** It hasn't been this -- so the premise
19 that there's this big opposition is simply a false premise or
20 maybe that's something that's -- you're reading too much in the
21 social media.

22 **MR. WARNER:** We have landowners agreeing now for fee
23 takes, your Honor, not just rights of entry. And we are also
24 going to start filing shortly some declarations and (indisc.)
25 fee but --

1 **THE COURT:** And many of the cities like the City of
2 Roma and County of Hidalgo, for example, actually welcomed this
3 as an improvement to the levy system that's desperately needed
4 to prevent flooding in those counties. And so I just wanted to
5 make sure you're not operating under a false assumption.

6 So let me now let's talk about bonding.

7 So yeah, I guess we could come up with a bond where
8 you could bond around what the government would like to
9 prevent. I guess if you want we could figure out what it would
10 cost to remove concrete and rebar. I would think that would be
11 something that would be a rather large expense. Bonding
12 (indisc.) probably isn't the best way to go, given that I think
13 we can get this all resolved in the next few weeks.

14 **MR. WARNER:** Judge, we will certainly let IBWC know
15 right after this hearing that the court has asked them to put
16 this to the top and get this done in a timely manner. I just
17 don't know how long that is. When I spoke to one of the
18 engineers yesterday, they indicated two to three weeks
19 depending on complexity. So I just don't know the complexity
20 here.

21 **THE COURT:** All right. And we don't know I guess
22 what was uploaded today.

23 **MR. WARNER:** I know it was 12 pages is what the IBWC
24 informed me.

25 **THE COURT:** All right. But that 12 pages may be very

1 helpful. There were maybe four -- six pages previously that
2 were not as helpful, I think, as the government expected. And
3 so perhaps this is elaborating on that.

4 **MR. WARNER:** Well hopefully it's the analysis that's
5 needed for IBWC, your Honor. But with the court's permission,
6 we'll -- if it's not, we'll let Fisher Industries know what we
7 need in order to complete the analysis.

8 **THE COURT:** So this analysis where they talk about
9 let's see, depth of innodated -- inundation for (indisc.)
10 floodplain ranges from three feet to 15 feet, average depth
11 seven feet; therefore, depth of water and bollard during an
12 event would also be seven feet. They talk about 263 cubic --
13 sorry 263 million cubic feet of water that can pass through
14 these. They talk about the effect of the bollards and how
15 basically their bollards run parallel to the river. I mean,
16 that's not the analysis. You need something in more depth than
17 that.

18 **MR. WARNER:** (indisc.) just take the river flow and
19 plug that into your project and then show that is in just a
20 very rudimentary explanation as to what I was trying to --

21 **THE COURT:** Okay. So here they talk about average
22 velocity of flood water is about point three feet per second.

23 **MR. WARNER:** And maybe -- maybe today, what they
24 submitted today, maybe that does and we can begin analysis,
25 your Honor.

1 **THE COURT:** All right. So then let's do this.

2 I'm going to enter an order stopping any grading or
3 shaving of the riverbank, and also enjoining any permanent
4 structure like the placement of concrete. And what else?

5 **MR. WARNER:** Bollards.

6 **THE COURT:** Bollards. Well, you can't put the
7 bollards without the concrete. I'll permit -- well it's
8 already been trenched. If the parties want to lay conduit in
9 there and lay -- what's already been trenched if they want to
10 put rebar in there and conduit, they're welcome to do that.

11 What else do I want to stop? We want no concrete
12 poured. We want no shaving of the riverbank.

13 **MR. WARNER:** And no bollard wall being constructed.

14 **THE COURT:** Yeah, and well, in general, no bollard
15 wall being constructed but that's can't happen without
16 concrete.

17 Mr. Hu, anything you want to add?

18 **MR. HU:** Just no bollard wall or any other kind of
19 obstructive wall. (indisc.) to say sheet metal or something
20 else. We don't want any sort of wall built that could deflect
21 water.

22 **THE COURT:** All right. Mr. --

23 **MR. WARNER:** Until the analysis.

24 **THE COURT:** Mr. Courtois, any problems with that?

25 **MR. COURTOIS:** No, we're not planning to build any

1 wall. The things that we want to be able to do are clear and
2 grub and to seed, trench, lay conduit and rebar.

3 **THE COURT:** All right. So I'll allow you to seed.
4 Again, we just don't want to do anything at the river's edge
5 that's dirt movement, you know, no shaving, no anything that
6 affects the riverbank.

7 **MR. COURTOIS:** Okay.

8 **THE COURT:** But seeding what you've already done is
9 reasonable and probably a good idea so that there's no erosion
10 of what's already done. And then again, no concrete pouring,
11 no actual construction of the wall till we can get this
12 hydrology in. And then I'll also require the government to
13 give this hydrology analysis high priority and just urge the
14 engineer there with Fisher to coordinate. I mean, this seems
15 like it's going to require expeditious work on both sides as
16 I'm sure the boundary is going to ask for additional
17 information.

18 So shall we have a status conference in a week to see
19 where we are and to make sure everybody's doing what they need
20 to be doing?

21 **MR. WARNER:** We would request that, your Honor.

22 **MR. COURTOIS:** We would like that from Fisher's point
23 of view.

24 **THE COURT:** All right. So --

25 **MR. KOBACH:** And your Honor, this is Kris Kobach

1 again for We Build the Wall. Will the court then be dismissing
2 us from this action or?

3 **THE COURT:** Do they need to be part of it?

4 **MR. WARNER:** Your Honor, if all they're supplying is
5 money and they're not in control of the earth-moving equipment,
6 then I guess that they're not doing anything active out there
7 that we're trying to enjoin.

8 **THE COURT:** Mr. Courtois, do you have any
9 disagreement of Mr. Kobach's analysis of We Build the Wall's
10 involvement?

11 **MR. COURTOIS:** No, honestly, we'd like to get rid of
12 them, Judge. In a nice way.

13 **(Laughter)**

14 **THE COURT:** All right. Well, all right. Well then
15 it sounds like they don't need to be involved anymore. And so
16 despite their catch name, we'll get rid of them so it'll just
17 be a Fisher Industries' defendants here.

18 So I'm going to ask the government to draft the
19 proposed order so that they include what I've stated and no
20 more. And then send it to the court and copy opposing counsel.
21 And then I'll get that entered today, shortly. If there's any
22 objections, I would ask that somebody -- that you-all call and
23 communicate that to the government, I guess, who has formally
24 appeared. And if you-all can't work it out, then we'll just
25 get you-all back on the phone again.

1 **MR. WARNER:** Judge, do we email that to the case
2 manager? The proposed order --

3 **THE COURT:** Yeah, to Ms. Rodriguez.

4 **MR. WARNER:** --after we've agreed?

5 **THE COURT:** Yeah.

6 **MR. WARNER:** Okay, will do.

7 **MR. SMITH:** Your Honor, John Smith, if I may?

8 **THE COURT:** Sure.

9 **MR. SMITH:** It sounds to me as though they haven't
10 acquired the property from Mr. Neuhaus. So I think we have to
11 keep the Neuhaus properties in because they are still the
12 landowner.

13 And then I'm also going to point out to the court and
14 maybe to the Fisher Industries groups, the actual bank is owned
15 by the IBWC and not by Mr. Neuhaus. So that's why shaving of
16 that bank is also a problem. IBWC acquired the bank from the
17 State of Texas back --

18 **THE COURT:** And so what is -- I know like at the
19 beach it's the mete and vegetation. How do you measure what --
20 how much of the bank the boundary actually owns

21 **MR. WARNER:** So IBWC said that they owned the
22 vertical portion. Once it became horizontal it became the
23 landowners' again. And so shaving it is shaved essentially
24 where IBWC owns it.

25 **THE COURT:** The vertical portion or it's maybe now

1 diagonal. And so now they own all the way up --

2 **MR. WARNER:** Almost horizontal now, yes.

3 **THE COURT:** Yes, okay. All right. So if you'll just
4 prepare an order that memorializes what the court has stated
5 and been agreed to by the parties and I'll get that entered as
6 quickly as you can get it to me.

7 **MR. WARNER:** Your Honor, we will draft it and share
8 that with Mr. Courtois. And then once we have an agreement,
9 we'll submit that to the case manager. Your Honor, if we have
10 a disagreement, we can just let the case manager have two
11 versions and let the court choose?

12 **THE COURT:** You could do that or and then if I have
13 any problems deciding if then I can get you-all on the phone
14 again.

15 **MR. WARNER:** Very well, your Honor.

16 **MR. COURTOIS:** That's fine, Judge.

17 **THE COURT:** All right. And Mr. Olivera, did you want
18 to say anything?

19 **MR. OLIVERA:** Now -- your Honor, I got in this case
20 less than 24 hours ago so I find it very interesting but I have
21 nothing to add.

22 **THE COURT:** All right. Well then I'll set this then
23 formally for hearing next week. What works best for out-of-
24 town counsel? I mean, I can do this by phone again.

25 What is today? Thursday? Let me just look next week

1 at my calendar quickly here.

2 (Pause)

3 I guess any early afternoon. My mornings are all
4 pretty full with criminal matters.

5 MR. WARNER: Does Thursday work your Honor?

6 THE COURT: Yeah, Thursday works. We can do Thursday
7 at 1:30 again. That's Central time.

8 MR. WARNER: Your Honor, if there is an issue with
9 the hydrology that the government believes the court needs to
10 understand further, would the court entertain a witness from
11 IBWC to explain to the court?

12 THE COURT: Sure. You can bring whomever you'd like
13 or you can submit whatever you like.

14 MR. WARNER: And I'm hoping there is not a problem
15 but just in case.

16 THE COURT: Sure.

17 MR. WARNER: Okay.

18 THE COURT: All right. Anybody else have anything
19 they want to add? Mr. Hu,

20 MR. HU: One thing, your Honor. For hearing next
21 Thursday, can I call in from Houston?

22 THE COURT: Sure, you may. I mean, I like some warm
23 bodies here.

24 MR. WARNER: I will be here.

25 THE COURT: Mr. Warner, maybe local counsel, Mr.

1 Olivera can be here next week as well.

2 **MR. OLIVERA:** I'll be here.

3 **THE COURT:** And especially if there's a witness you
4 want to bring, giving some an opportunity to cross examine
5 them. And again, if you give us some little advance warning,
6 we can probably Skype some people in as well.

7 All right. Then I'm going to recess and wait to get
8 the proposed order from you, Mr. Warner.

9 **MR. WARNER:** Correct, your Honor.

10 **THE COURT:** All right. We'll be in chambers all
11 afternoon so as soon as it comes in, we'll get it entered.

12 **MR. WARNER:** Thank you, your Honor.

13 **THE COURT:** All right. We'll be in recess.

14 **(Attorneys thank the court)**

15 **THE MARSHAL:** All rise.

16 **(Proceeding adjourned at 2:42 p.m.)**

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



Signed

December 9, 2019

Dated

TONI HUDSON, TRANSCRIBER